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No.

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1997

THE GRAND FRATERNITY ROSAE CRUCIS,
Petitioner,

v.

WILLIAM B. MOYER, ESQUIRE and
GERALD POESNECKER,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the *Rooker-Feldman* doctrine bars federal jurisdiction over the subject matter of plaintiff's First Amendment cause of action where plaintiff was not a party in the state court litigation and the federal action was commenced prior to the completion of the state litigation?

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OPINION BELOW

The Memorandum and Order of the United States District Court are set forth at Appendix A. The Judgment Order of the United States Court of Appeals for the Third Circuit is set forth at Appendix B.

STATEMENT OF JURISDICTION

The United States Court of Appeals for the Third Circuit entered its order affirming the Order of the District Court on April 29, 1997. The jurisdiction of this Court is invoked under 28 U.S.C. §1254.

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the First Amendment to the United States Constitution and Section 1 of the Fourteenth Amendment to the United States Constitution.

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. Amend. I.

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. Amend. XIV, §1

STATEMENT OF THE CASE

Petitioner, The Grand Fraternity Rosae Crucis ("The Rosicrucians"), is a worldwide religious organization headquartered in Bucks County, Pennsylvania. The Rosicrucians filed in the United States District Court for the Eastern District of Pennsylvania, *inter alia,* a Second Amended Complaint alleging violations of the First and Fourteenth Amendments. The complaint seeks damages and an injunction prohibiting and precluding the respondents from using state government to intervene in the internal, doctrinal and religious affairs of

the Rosicrucians. It was filed during the pendency of litigation in the Pennsylvania courts between two groups of Rosicrucians vying for control of the Beverly Hall Corporation ("Corporation") and the Beverly Hall Foundation ("Foundation"), non-profit entities which own all Rosicrucian property. In the state court litigation, Dr. Paul P. Ricchio and Respondent Gerald Poesnecker challenged each other for control of the Corporation and Foundation. The Court of Common Pleas of Bucks County, Pennsylvania made numerous factual findings regarding the dispute and ordered a plebescite under the Pennsylvania non-profit corporation law to determine control of the Corporation and the Foundation. Significantly, to participate in the plebiscite would require Rosicrucians to violate a central tenet of their religion by disclosing publicly their membership in the Grand Fraternity. Also, by ordering that the Corporation's governance be restructured according to plebiscite, the Common Pleas Court in effect restructured the Rosicrucians from a hierarchical to a congregational body. Accordingly, the complaint was filed in the United States District Court to, *inter alia,* halt the plebiscite. Moreover, during the state court litigation, the Pennsylvania courts purported to legally sanction Respondent Poesnecker as the properly constituted Supreme Grand Master, the Rosicrucians' religious leader. Thus, the complaint alleged that the state courts had contravened the First and Fourteenth Amendments to the United States Constitution by (a) deciding the purely religious question of who held the office of Supreme Grand Master and (b) ordering the heretofore secret, hierarchical Rosicrucians to restructure their corporate leadership through a public plebiscite which would require disclosure of membership in the Rosicrucians by those choosing to vote.

On July 25, 1996, citing the *Rooker-Feldman* doctrine, the United States District Court dismissed the Rosicrucians' Second Amended Complaint. (Appendix A)

On April 29,1997, the United States Court of Appeals for the Third Circuit affirmed the dismissal. (Appendix B)

A. The underlying religious dispute.

On September 12, 1989, the Council of Seven (the highest religious ruling body of the Rosicrucians) removed Respondent Poesnecker from his position as Supreme Grand Master and appointed Dr. Paul P. Ricchio as temporary Supreme Grand Master. Pursuant to the Rosicrucians' Organic Law (which governs their religious practices and structure) and the Corporation's by-laws, the Supreme Grand Master must also be the Corporation's Director General and the Foundation's President.

Respondent Poesnecker and his supporters instituted suit in the Court of Common Pleas against Dr. Ricchio and other individual Rosicrucians seeking to enjoin them from interfering with Poesnecker's administration of the Corporation and Foundation. Dr. Ricchio counterclaimed asking the court to find Poesnecker liable for breach of fiduciary duty to the Corporation and Foundation.

B. The Pennsylvania courts decide who shall be Petitioner's religious leader.

On February 5, 1992, the Court of Common Pleas issued an adjudication and decree nisi finding that Poesnecker continued to be the Supreme Grand Master and appointing Respondent Moyer as custodian/receiver to conduct a plebiscite to amend the Corporation's Articles of Incorporation to provide for the election of the Corporation's directors. Pending the plebiscite, the custodian/receiver, Respondent Moyer, was given full control over the Corporation.

The Court of Common Pleas concluded, *inter alia,* that the Council of Seven had violated the Rosicrucians' Organic Law when it removed Poesnecker as the Supreme Grand Master.

Dr. Ricchio and others appealed the Common Pleas decision to the Pennsylvania Commonwealth Court on the ground that the Common Pleas Court had contravened the First and Fourteenth Amendments to the Constitution of the United States by deciding the purely religious question of who held the office of Supreme Grand Master and by ordering the here-

tofore secret, hierarchical Rosicrucians to democratically restructure their corporate leadership through a public plebiscite. They alleged that this plebiscite would require the participants to violate the Rosicrucian religious tenet of secret membership by disclosing their membership in the Rosicrucians in order to vote.

On September 17, 1993, the Commonwealth Court affirmed holding that the Council of Seven had not validly removed Poesnecker as Supreme Grand Master and holding further that a plebiscite of the membership of the Corporation was required. After noting that a mandatory disclosure of the secret membership of the Rosicrucians in the corporate election would be improper, the Commonwealth Court found that the Common Pleas Court had not ordered such disclosure and that the methods the court-appointed custodian/receiver developed for the election would still be subject to constitutional review by the trial court. Dr. Ricchio and others subsequently filed a Petition for allocatur with the Pennsylvania Supreme Court which was denied on July 29, 1994 and a Petition for Certiorari with the United States Supreme Court which was denied on January 9, 1995.

On August 22, 1994 the Common Pleas Court approved procedures submitted by defendant Moyer, the custodian/receiver, to govern the plebiscite for the election of new leadership in the Corporation. Dr. Ricchio and others again appealed to Commonwealth Court asserting that their federal and state constitutional rights were contravened by the plebiscite procedure since that procedure required potential voters to disclose their membership in the Rosicrucians and permitting the custodian/receiver to make determinations of the religious qualifications of the potential voters.

C. The federal courts refuse to intervene.

While this second appeal was pending in the Commonwealth Court, Dr. Ricchio and Petitioner filed suit in the United States District Court for the Eastern District of Pennsylvania prior to the holding of the plebiscite. The District Court refused to halt the plebiscite which subsequently was held under the auspices of the custodian/receiver.

On May 19, 1995, the Commonwealth Court held that the plebiscite procedures did not require any member of the Rosicrucians to disclose their identity in order to vote in the corporate election.

On September 27, 1995, the District Court denied the custodian/receiver's motion to dismiss Petitioner's complaint. Pursuant to the *Rooker-Feldman* doctrine, the District Court dismissed all claims brought by Dr. Ricchio since he had been a litigant in the state court proceedings but let Petitioner remain as plaintiff since it had not participated in the state litigation. In the Second Amended Complaint, Petitioner alleged, *inter alia,* that the Respondent Poesnecker, as the newly appointed President of the Corporation, now "holds himself out as the legally sanctioned Grand Master of the Rosicrucians."

On July 25, 1996, citing the *Rooker-Feldman* doctrine, the District Court dismissed Petitioner's Second Amended Complaint for lack of subject matter jurisdiction.

On April 29, 1997, the United States Court of Appeals for the Third Circuit affirmed the dismissal of petitioner's Second Amended Complaint.

REASONS FOR GRANTING THE WRIT

A. Petitioner was not a party in the state court litigation.

In dismissing Petitioner's complaint, the District Court cited this Court's decisions in *The District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462 (1983) and *Rooker v. Fidelity Trust Co.,* 263 U.S. 413 (1923). The District Court held that it lacked subject matter jurisdiction to review final adjudications of Pennsylvania's highest court or to evaluate the constitutional claims that are inextricably intertwined with the state court's decision in a judicial proceeding. See also *Guarino v. Larsen,* 11 F.3d 1151 (3rd Cir. 1991) However, federal jurisdiction over the subject matter of Petitioner's cause of action is not barred since Petitioner was not a party in the state court litigation. In this regard, the Third Circuit Court of Appeals has held that "the *Rooker-Feldman* doctrine has a close affinity to the principles embodied in the legal concepts

of claim and issue preclusion . . . and the basic premise of preclusion is that non-parties to a prior action are not bound. A non-party is not precluded from litigating matters decided in a prior action simply because it passed by an opportunity to intervene." *Valenti v. Mitchell,* 962 F.2d 288, 297 (3rd Cir. 1992) ["We have found no authority which would extend the *Rooker-Feldman* doctrine to persons not parties to the proceedings" before the state courts."]; see also, *Chase National Bank v. City of Norwalk,* 91 U.S. 431 (1934); *Society Hill Civic Ass'n. v. Harris,* 632 F.2d 1045, 1050, note 4, 1053 note (3rd Cir. 1980).

Petitioner did not participate in the state court litigation and no state litigant purported to act on behalf of Petitioner. Accordingly, Petitioner's claims have not been adjudicated in the state court system. Cf. *Guarino, supra* at 1156.

Moreover, since Petitioner did not participate in the state court proceedings, there can be no presumption that the state procedures would have afforded an adequate remedy to Petitioner. *Valenti, supra* at 296-7. While Petitioner's complaint may cover many of the same issues as those litigated in the Pennsylvania courts, that does not divest the District Court of jurisdiction since Petitioner did not participate in those proceedings. *Chase National Bank, supra; Valenti, supra.*

B. Petitioner filed its federal complaint prior to the completion of the state litigation.

The District Court is not divested of jurisdiction by *Rooker-Feldman* since Petitioner commenced its federal action prior to the completion of the parallel state litigation. Since the instant action was commenced prior to the conclusion of the state court litigation, the District Court was not asked to review a final state court judgment, and, accordingly, the *Rooker-Feldman* doctrine did not divest the federal court of subject matter jurisdiction. *Valenti, supra* at 297. Given these circumstances, the relevant consideration must be whether or not the principles of abstention permit the federal court to appropriately decline to exercise jurisdiction because of the parallel state court litigation. *Moses H. Cone Memorial Hospital v. Mercury,* 460 U.S. 1 (1983) [federal court may

decline to exercise its jurisdiction because of parallel state court litigation only in exceptional circumstances].

In *Colorado River Water Conservation District v. United States,* 424 U.S. 800 (1976) this Court held as follows:

> "Abstention from the exercise of federal jurisdiction is the exception, not the rule. 'The doctrine of abstention, under which a district court may decline to exercise or postpone the exercise of its jurisdiction, is an extraordinary and narrow exception to the duty of a district court to adjudicate a controversy properly before it. Abdication of the obligation to decide cases can be justified under this doctrine only in the exceptional circumstances where the order to the parties to repair to the state court would clearly serve an important countervailing interest.'"

In *Will v. Calvert Fire Insurance Co.,* 437 U.S. 655 (1978), this Court held that where a case involves an issue of federal law, this factor alone weighs heavily in favor of the federal courts asserting jurisdiction. In the instant case, Petitioner's primary claim arises under the First and Fourteenth amendments to the U.S. Constitution. Furthermore, where, as here, the cause of action involves fundamental First Amendment questions, abstention by the federal courts has been deemed to be particularly and "peculiarly" inappropriate. *Daniel v. Waters,* 515 F.2d 485 (6th Cir. 1975); *Canton v. Spokane School Dist. No. 81,* 498 F.2d 840 (9th Cir. 1974) [Cases involving vital civil rights issues are "least likely candidates for abstention".]

The dismissed complaint addresses fundamental First Amendment issues of free exercise of religion and state establishment of religion such that there exists no circumstances justifying the District Court's abstention from exercising its jurisdiction. Indeed, it would be difficult to imagine a more thoroughgoing transgression of religious liberty than that undertaken by the Pennsylvania courts in this case. The state courts have intervened in Petitioner's internal, doctrinal and religious affairs to the extent that the courts have transformed Petitioner's very structure from a hierarchical to a congregational body, burdened the free exercise of religion by requiring Petitioner's faithful to violate Petitioner's rule of secrecy in

order to vote in the court mandated plebiscite, and sanctioned Respondent Poesnecker as Petitioner's true religious leader. These actions by the Pennsylvania courts contravene the First and Fourteenth amendments as well as the decisions of this Court. See *Jones v. Wolf*, 443 U.S. 595 (1979); *Serbian Orthodox Church v. Milivojevich*, 426 U.S. 696 (1976); *Maryland & Va. Eldership of Churches of God v. Church of God at Sharpsburg, Inc.*, 396 U.S. 367 (1970); *Presbyterian Church v. Mary Blue Hull Mem. Presbyterian Church*, 393 U.S. 440 (1969); *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church*, 344 U.S. 94 (1952). Given these extreme measures by the state courts, the District Court's dismissal of Petitioner's complaint for lack of subject matter jurisdiction does not fall within the narrow circumstances justifying abstention and is "peculiarly" inappropriate.

CONCLUSION

For these reasons, the writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A - MEMORANDUM AND ORDER OF THE UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF PENNSYLVANIA, DATED JULY 25, 1996

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE GRAND FRATERNITY ROSAE CRUCIS	:	CIVIL ACTION
v.	:	NO. 95-731
WILLIAM B. MOYER, Esq. and GERALD E. POESNECKER	:	

ORDER

AND NOW, this 25th day of July, 1996; for reasons set forth in the Court's memorandum of July 25, 1996;

IT IS ORDERED: Plaintiff's complaint is DISMISSED for lack of subject matter jurisdiction.

IT IS FURTHER ORDERED: The motion to intervene by Gerald Poesnecker "in his capacity as Supreme Grand Master of the Fraternity," the "duly elected" Council of Seven of the Fraternity, and the "duly elected" Board of Directors of the Beverly Hall Corporation and the Beverly Hall Foundation is DENIED AS MOOT.

RAYMOND J. BRODERICK, J.

FILED JUL 25 1996

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE GRAND FRATERNITY ROSAE CRUCIS	:	CIVIL ACTION
v.	:	NO. 95-731
WILLIAM B. MOYER, Esq. and GERALD E. POESNECKER	:	

MEMORANDUM

BRODERICK, J. July 25, 1996

Presently before the Court is an action in which the Plaintiff, the Grand Fraternity Rosae Crucis ("The Rosicrucians"), alleges violations of the First and Fourteenth Amendment and the Religious Freedom and Restoration Act, 42 U.S.C. § 2000bb *et seq*. This case arises out of more than five years of state court litigation between two groups of Rosicrucian members over control of the Rosicrucian religious organization and a dispute as to whether Dr. Paul Ricchio or Gerald Poesnecker holds the office of Supreme Grand Master of the Rosicrucians. The court of Common Pleas of Bucks County, Pennsylvania, made numerous factual findings regarding the dispute and ordered a plebiscite under Pennsylvania law to determine control of the Beverly Hall Corporation and the Beverly Hall Foundation, non-profit entities which own all Rosicrucian property. The action in this federal court, seeking damages and an injunction "prohibiting and precluding defendants from intervening in the internal, doctrinal and/or religious affairs of the Rosicrucians," was initiated after two state court appeals and an appeal to the United States Supreme Court by Dr. Ricchio and three other members of the Rosicrucians, who were all defendants in the state court action.

In the first appeal, the Pennsylvania Commonwealth Court affirmed the Court of Common Pleas and found, *inter alia,* that the lower court had not violated the constitutional

rights of Dr. Ricchio and his supporters in concluding that Gerald Poesnecker had not been validly removed from his leadership position as Supreme Grand Master of the Rosicrucians and in directing a plebiscite to elect a new board of directors of Beverly Hall Corporation. Dr. Ricchio and his supporters then sought relief through a petition for allocatur to the Pennsylvania Supreme Court and a petition for writ of certiorari to the United States Supreme Court, which were both denied. *See Poesnecker, et al. v. Ricchio, et al.*, 631 A.2d. 1097 (Pa. Commw. 1993) (hereinafter *Ricchio* I); *allocatur denied,* 647 A.2d 905 (Pa. 1994); *cert. denied,* 115 S.Ct. 727 (1995). In the second appeal, after the trial court had approved procedures for the plebiscite, Dr. Ricchio and his supporters claimed constitutional error in those procedures but the Pennsylvania Commonwealth Court again affirmed the trial court. *See Beverly Hall Corporation v. Ricchio, et al.*, 659 A.2d 600 (Pa. Commw. 1995).

This federal action was brought during the pendency of the second appeal in the name of both Dr. Paul Ricchio and the Rosicrucians, and named as defendants both the Court of Common Pleas and William Moyer, a lawyer appointed by the Court of Common Pleas to supervise the plebiscite. Plaintiffs sought damages and injunctive relief on the ground that the state court rulings and Defendant Moyer's actions in implementing the court-ordered election constituted an impermissible establishment of religion and impermissibly burdened Plaintiffs' free exercise of religion in violation of the First and Fourteenth Amendments and the Religious Freedom Restoration Act.

Both the Court of Common Pleas and Moyer moved to dismiss the federal action, and Dr. Ricchio and the Rosicrucians, who were both represented by the same counsel, filed a response. In a memorandum and order dated September 27, 1995, this Court granted the motion to dismiss by the Court of Common Pleas on the ground that the Eleventh Amendment barred Plaintiffs' cause of action against the state court, but denied Defendant Moyer's motion in which he asserted that

this Court should abstain or alternatively that the federal action was barred under the Anti-Injunction Act or principles of collateral estoppel.

In its September 27, 1995 ruling, this Court also dismissed all claims by Dr. Ricchio on the ground that the claims were "inextricably intertwined" with the state court decisions and therefore barred by the *Rooker-Feldman* doctrine. While this Court permitted claims brought in the name of the Rosicrucians to proceed, the Court specifically stated that it could not determine at that time whether the *Rooker-Feldman* doctrine also barred those claims and would reserve its determination as to whether the Rosicrucians were a party or in privity with Dr. Ricchio in the state court litigation. The Court also permitted the Rosicrucians to file an amended complaint consistent with the Court's September 27, 1995 memorandum and order, and the Rosicrucians added Gerald Poesnecker as a defendant.

Upon additional review of the pleadings in this case, and consistent with this Court's reservation of its determinations as to the Rosicrucians, the Court will now dismiss Plaintiff's complaint for reasons set forth in this memorandum.

I. Background

The history of the state court litigation is set forth in detail in the Court's September 27, 1995 opinion and will be only briefly repeated or summarized here.

In both the original and amended complaints filed in this Court, the Grand Fraternity Rosae Crucis alleges that it is a worldwide religious organization known as the Rosicrucians, headquartered in Bucks County, Pennsylvania. The Rosicrucians allege that their assets are managed through two Pennsylvania non-profit entities, the Beverly Hall Corporation and the Beverly Hall Foundation, and that these entities are "interdependent with and inseparable from the Rosicrucians." Notably, Plaintiff alleges that central tenets of the Rosicrucian religion can be violated through public disclosure of one's own membership in the Rosicrucians or disclosure of the membership of others.

Plaintiff alleges that on September 12, 1989, a meeting of the Council of Seven of the Rosicrucians was held and that the

Council removed Gerald Poesnecker from his position as Supreme Grand Master of the Rosicrucians and elected Dr. Ricchio as temporary Supreme Grand Master. Plaintiff further alleges that "[t]he Rosicrucians' Organic Law, which governs their religious practices, as well as the Corporation's By-Laws, provide that the Supreme Grand Master must also be the Corporation's Director General and the Foundation's President." Although Plaintiff asserts that the purported removal of Poesnecker from his position as Supreme Grand Master "automatically removed him from his corporate positions," Plaintiff alleges that the Council of Seven also voted to remove Poesnecker from his corporate positions and then conferred upon Dr. Ricchio the positions of Director General of the Corporation and President of the Foundation.

Gerald Poesnecker and his supporters subsequently instituted a suit in equity in the Court of Common Pleas, Bucks County, Pennsylvania, against Dr. Ricchio and several other individuals, seeking to enjoin them from interfering with Poesnecker's administration of the Rosicrucian organizations. Plaintiff alleges that "Dr. Paul Ricchio and others" in turn asked the Court of Common Pleas to find Poesnecker liable for breach of fiduciary duty to the Corporation and Foundation and to require Poesnecker to reimburse funds purportedly misappropriated from Beverly Hall Corporation.

On February 5, 1992, the Court of Common Pleas, Judge Sokolove, issued an adjudication and decree nisi ordering that:

1. Gerald Poesnecker's position as Supreme Grand Master of the Grand Fraternity, and similar positions in the related orders, are not disturbed;
2. The Council of Seven shall be as last appointed by Poesnecker, in accordance with the provisions of the Organic Law;
3. The said Supreme Grand Master or the Council of Seven shall have no control over the property, assets, funds or revenues generated by its activities, in that said property shall be in the control of Beverly Hall Corporation and Beverly Hall Foundation respectively;

4. A custodian/receiver is appointed to:
   a. Determine the membership of the corporation; and
   b. Conduct a plebiscite of said membership for the purpose of making appropriate clarifying amendments to the Articles of Incorporation, and to provide for the election of directors, and, if appropriate, officers of the corporations; and otherwise in accordance with the provisions of 15 Pa.C.S. 5764;
5. Pending the election process, the custodian/receiver shall take full control over the property, receipts and expenditures of the corporation;
6. The said custodian/receiver shall be compensated for his or her services by the said corporation, in amounts subject to approval by the Court;
7. Upon completion of his or her functions, the custodian/receiver shall return control of the management and assets of the corporations to the elected directors and officers thereof.

Poesnecker v. Ricchio, No. 89-7661-15-5 (Court of Common Pleas, Bucks County, February 5, 1992). In an accompanying opinion, Judge Sokolove wrote that disputes between church factions may be resolved under Pennsylvania law by identifying the "highest judicatory" within a church and then deferring to that authority. In applying this formula to the office of the Supreme Grand Master of the Rosicrucians, Judge Sokolove stated that he was compelled to give literal application to the Organic Law of the Rosicrucians. In so doing, Judge Sokolove concluded that the meeting at which Poesnecker was purportedly removed by the Council of Seven was not a valid meeting and therefore the removal of Poesnecker as Supreme Grand Master of the Rosicrucians was invalid. As for control of the Corporation and Foundation, Judge Sokolove found that a trial court in equity was not similarly limited in its powers as the corporations had been created and conducted business under the laws of the Commonwealth of Pennsylvania. Judge Sokolove then determined that the absence of controls and accountability in the corporations, the absence of provisions for electing directors, and abuse by

Poesnecker of his authority required the removal of Poesnecker and the other directors from their corporate positions pending a new election by the members of the corporations under Pennsylvania law.

After Judge Sokolove denied post-trial motions in which Dr. Ricchio and the other defendants asserted that the court's rulings violated the U.S. and Pennsylvania Constitutions, defendants appealed to Commonwealth Court on the ground that the Court of Common Pleas had "contravened the First and Fourteenth Amendments to the United States Constitution by (a) deciding the purely religious question of who held the office of Supreme Grand Master and (b) ordering the heretofore secret, hierarchical Rosicrucians to select their corporate leaders through a public plebiscite which would require disclosure of membership in the Rosicrucians by those choosing to vote." Plaintiff's Second Amended Complaint, at 6-7.

On September 17, 1993, in a written opinion, the Commonwealth Court affirmed the Court of Common Pleas. *See Ricchio I, supra.* Commonwealth Court found that Judge Sokolove had correctly determined that Poesnecker had not been validly removed as Supreme Grand Master and that a plebiscite of the membership of the Beverly Hall Corporation to elect a new board of directors was required. After noting that a mandatory disclosure of the secret membership of the Rosicrucians in the corporate election would be improper, Commonwealth Court found that Judge Sokolove had not ordered any such disclosure and that the methods the court-appointed custodian developed for the election would still be subject to constitutional review by the trial court. Dr. Ricchio and his supporters subsequently filed a petition for allocatur with the Pennsylvania Supreme Court, which was denied on July 29, 1994, and a petition for certiorari with the United States Supreme Court, which was denied on January 9, 1995.

On August 22, 1994, Judge Sokolove approved procedures submitted by Defendant Moyer to govern the plebiscite for the election of new leadership in the Beverly Hall Corporation. Dr. Ricchio and his supporters again appealed to Commonwealth Court, raising the constitutional issues addressed in the first appeal as well as again asserting that the election

procedures violated their federal and state constitutional rights by purportedly requiring potential voters to disclose their membership in the Rosicrucians and permitting Moyer to make determinations of religious qualifications. As discussed *supra*, this federal action was then initiated on behalf of Dr. Ricchio and the Rosicrucians immediately before the election. After this Court refused to grant Plaintiffs a temporary restraining order on the ground that Plaintiffs were unlikely to prevail on the merits as the Court had significant doubt as to its jurisdiction to sit in review of the state court decisions, the plebiscite proceeded as scheduled.

On May 19, 1995, Commonwealth Court issued an opinion again affirming the trial court. *See Beverly Hall Corporation v. Ricchio*, 659 A.2d 600 (Pa. Commw. 1995) (hereinafter *Ricchio II*). After noting that its first opinion had already resolved Dr. Ricchio's repeated allegations of constitutional violations arising out of the trial court's determination of Poesnecker's status and the necessity of the plebiscite, Commonwealth Court found that the plebiscite procedures approved by the trial court did not require any member of the Rosicrucians to disclose their identity in order to vote in the corporate election and did not require Defendant Moyer to make determinations of membership in the corporation based on religious qualifications.

As set forth *supra*, this Court subsequently denied Defendant Moyer's motion to dismiss the Rosicrucians' complaint in a Memorandum and Order dated September 27, 1995. Pursuant to the *Rooker-Feldman* doctrine, this Court also dismissed all claims brought by Plaintiff Ricchio. In an amended complaint incorporating most of the original complaint, the Rosicrucians now further allege that the new board of directors of the Corporation chosen in the plebiscite appointed Defendant Poesnecker president of the Beverly Hall Corporation, and that Poesnecker has taken various actions against Dr. Ricchio and "now holds himself out as the legally sanctioned Supreme Grand Master of the Rosicrucians." Presently also pending before the Court is a motion to intervene on behalf of the "duly elected" board of directors of the Beverly Hall Foundation and the Beverly Hall Corporation, the "duly appointed"

Council of Seven of the Fraternity, and Gerald Poesnecker in his "capacity as Supreme Grand Master," asserting that they are the only real parties in interest who can prosecute this action on behalf of the Rosicrucians.

II. Discussion

Under the *Rooker-Feldman* doctrine, as set forth in the Court's September 27, 1995 Memorandum, "federal district courts lack subject matter jurisdiction to review final adjudications of a state's highest court or to evaluate constitutional claims that are inextricably intertwined with the state court's decision in a judicial proceeding." *Guarino v. Larsen,* 11 F.3d 1151, 1156 (3d Cir. 1991); *see District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462, 103 S.Ct. 1303 (1983); *Rooker v. Fidelity Trust Co.,* 263 U.S. 413, 44 S.Ct. 149 (1923). The *Rooker-Feldman* doctrine also bars federal review of decisions by lower state courts. *See, e.g., Port Auth. Benevolent Ass'n v. Port Auth. of New York and New Jersey,* 973 F.2d 169, 177 (3d Cir. 1991).

In *Centifanti v. Nix,* 865 F.2d 1422 (3d Cir. 1989), the Third Circuit quoted Justice Marshall in *Pennzoil v. Texaco, Inc.,* 481 U.S. 1, 107 S.Ct. 1519 (1987) for guidance in determining when a claim is "inextricably intertwined" with the particular decision of a state court:

> While the question of whether a federal constitutional challenge is inextricably intertwined with the merits of a state court judgment may sometimes be difficult to answer, it is apparent, as a first step, that the federal claim is inextricably intertwined with the state court judgment if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it. Where federal relief can only be predicated upon a conviction that the state court was wrong, it is difficult to conceive the federal proceeding as, in substance, anything other than a prohibited appeal of the state court judgment.

Centifanti, supra, at 1430 (quoting *Pennzoil, supra,* at 25, 1533 (Marshall, J., concurring)); *see also FOCUS v. Allegheny County Court of Common Pleas,* 75 F.3d 834, 840 (3d Cir. 1996) ("*Rooker-Feldman* only applies when in order to grant the federal plaintiff the relief sought, the federal court must

determine that the state court judgment was erroneously entered or must take action that would render that judgment ineffectual.").

As the Court also observed in its earlier Memorandum, the Third Circuit has stated that " '[t]he Rooker-Feldman doctrine has a close affinity to the principles embodied in the legal concepts of claim and issue preclusion . . . The basic premise of preclusion is that non-parties to a prior action are not bound. A non-party is not precluded from litigating matters decided in a prior action simply because it passed by an opportunity to intervene." *Marks v. Stinson,* 19 F. 3d 873, 886 (3d Cir. 1994) (quoting *Valenti v. Mitchell,* 962 F.2d 288, 297 (3d Cir. 1992)).

Consistent with these standards, the Court has no doubt after its review of the pleadings in this case and after taking judicial notice of the state court opinions issued over five years of state court litigation that the central issue before the state court was the dispute between Dr. Ricchio and Gerald Poesnecker over control of the Rosicrucians. The Court of Common Pleas found that Gerald Poesnecker had not been validly removed from his leadership position as Supreme Grand Master and applied Pennsylvania law to determine the leadership of the Pennsylvania corporations associated with the Rosicrucians, through a plebiscite. The Court of Common Pleas also concluded that these rulings were consistent with United States Supreme Court case law governing disputes in religious institutions, and this conclusion was affirmed by Commonwealth Court. Dr. Ricchio and his supporters pursued remedies in the state and federal systems by seeking relief in the Pennsylvania Supreme Court and the United States Supreme Court, and were denied review.

Although no party captioned "The Rosicrucians" or "The Grand Fraternity Rosae Crucis" was named in the state court litigation, the state court's rulings, affirmed by Commonwealth Court, that Poesnecker had not been removed as Supreme Grand Master of the Rosicrucians and that a plebiscite was required to determine the leadership of the Rosicrucians' affiliated corporations — corporations which Plaintiff in this federal action has alleged are "interdependent with and

inseparable from the Rosicrucians" — obviously effect who may now lead the Rosicrucians and who may be entitled to bring an action in the name of the Rosicrucians. The Court is convinced that this federal action purportedly brought on behalf of the Rosicrucians requires federal review of the dispute over the leadership of the Rosicrucians which was the subject of the extensive state court litigation and rulings, including Dr. Ricchio's appeal to the United States Supreme Court, and such review by this Court is clearly forbidden by *Rooker-Feldman.*

The attempts by Plaintiff Rosicrucians (and, before his dismissal, Plaintiff Ricchio) to avoid the jurisdictional bar of *Rooker-Feldman* by suing the Court of Common Pleas, Defendant Moyer, and then Gerald Poesnecker, alleging both constitutional violations and violations of the Religious Freedom and Restoration Act arising out of the state court's rulings, the plebiscite, and Gerald Poesnecker's actions after being elected to the leadership of Beverly Hall Corporation do not mandate a different result. The Third Circuit has found that when a litigant fails to bring a constitutional claim in state court and then attempts to bring the constitutional claim in federal court, "it is appropriate to presume that the state court would have been willing to decide his constitutional claims subject to rebuttal by clear evidence to the contrary." *Guarino, supra,* at 1161; *see also Blue Cross and Blue Shield of Maryland v. Weiner,* 868 F.2d 1550, 1554-55 (11th Cir. 1989) (applying *Rooker-Feldman* to bar non-constitutional federal claims). Here, both the Court of Common Pleas and the Commonwealth Court considered and rejected Dr. Ricchio's claims that the trial court's procedures violated the First Amendment's requirement of deference by civil courts in religious disputes. Moreover, as noted in the Court's memorandum of September 27, 1995, the Religious Freedom and Restoration Act was made effective on November 16, 1993, prior to additional litigation by Dr. Ricchio in the Court of Common Pleas. Plaintiff's additional claims against Gerald Poesnecker clearly arise out of the state court's judgment and the results of the court-ordered corporate election, and are merely another attempt to attack the state court judgments.

As this Court is therefore without jurisdiction, the Court cannot and does not make any ruling as to the correctness of the state court's decisions regarding the leadership of the Rosicrucians or the procedures used in the corporate election. The Court only notes that under the *Rooker-Feldman* doctrine, "[j]ust as federal district courts should presume that pending state court proceedings can correctly resolve federal questions, they should also presume that completed state court proceedings have correctly resolved these questions." *Guarino, supra,* at 1157. After more than five years of complicated litigation in the state court system, with appeals to Commonwealth Court, the Pennsylvania Supreme Court, and the United States Supreme Court, this Court has not been presented with any reason to justify this federal court ignoring the mandate of *Rooker-Feldman* that federal district courts lack subject matter jurisdiction to review the adjudications of state courts.

An appropriate Order follows.

APPENDIX B - JUDGMENT ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, ENTERED APRIL 29, 1997

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 96-1727

THE GRAND FRATERNITY ROSAE CRUCIS,
Appellant

v.

WILLIAM B. MOYER, ESQUIRE;
GERALD POESNECKER

Appeal from the United States District Court
for the Eastern District of Pennsylvania
D.C. Civil Action No. 95-cv-00731
(Honorable Raymond J. Broderick)

Argued April 14, 1997

Before: SCIRICA, COWEN and NYGAARD, *Circuit Judges*

JUDGMENT ORDER

After consideration of all contentions raised by appellant, and essentially for the reasons set forth in the Memorandum and Order dated July 25, 1996, of the Honorable Raymond J. Broderick, it is

ADJUDGED AND ORDERED that the judgment of the district court entered July 26, 1996, be and is hereby AFFIRMED.[1]

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1. Because we affirm the district court's judgment, we decline to reach the merits of the motion for intervention/substitution.

Costs taxed against appellant.

BY THE COURT,

_____

Circuit Judge

Attest:

_____

P. Douglas Sisk, Clerk
APR 29 1997

Certified as a true copy and issued in lieu
of a formal mandate on May 21, 1997

Teste:

Clerk, U.S. Court of Appeals for the Third Circuit.

97 211

No. 94-75[illegible]

Supreme Court, U.S.
FILED
SEP 4 1997
CLERK

In The

Supreme Court of the United States

October Term, 1996

THE GRAND FRATERNITY ROSAE CRUCIS,

Petitioner,

vs.

WILLIAM B. MOYER, ESQUIRE and GERALD POESNECKER,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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I

COUNTERSTATEMENT OF THE CASE

Pursuant to respondents' obligation under Rule 15, they submit the following Counterstatement of the Case in order to correct the numerous misstatements of fact and impertinent matters that are offered by counsel who has filed the present petition.

As explained below in argument, the actual petitioner in the present appeal is Dr. Paul P. Ricchio who had filed the present action at the District Court level in his own name and on behalf of the "Grand Fraternity Rosae Crucis". The foregoing is correctly known as Fraternitas Rosae Crucis or the Rosicrucian Fraternity. At no time did the legitimate representatives of the Rosicrucian Fraternity ("the Rosicrucians") commence the present federal action. A Petition for Intervention was filed at both the Federal District Court and Federal Court of Appeals level by the persons who have been lawfully found by the Pennsylvania state courts to be the legitimate Supreme Grand Master, his Council of Seven, and by the corporate Boards of Directors of the Rosicrucians.

At the District Court, Dr. Ricchio was appropriately removed as a party by the Honorable Raymond J. Broderick on September 27, 1995, in a Memorandum and Order which Dr. Ricchio has never appealed. The result of that decision was to leave Dr. Ricchio's legal counsel with no natural person or duly recognized corporate body that could be identified and therefore claimed by that counsel to be in lawful control of the Rosicrucians.

This Court has previously reviewed all of the matters which Dr. Ricchio now seeks to bring before it now under the cloak of the "Grand Fraternity Rosae Crucis", an entity which he claims was not represented during the five to six years of Pennsylvania

court litigation. His prior petition to this Court is found at No. 94-757, October Term, 1994. All of the constitutional issues that are inherent in this petition were considered and disposed of both at the Pennsylvania state court level, and were again presented in the Petition for Writ of Certiorari that was submitted to this Court. His "new issue" related to avoidance of the application of the "Rooker-Feldman" doctrine[1] is discussed below.

In order to obtain a fresh basis for challenging his rejection as the leader of the Rosicrucians, Dr. Ricchio sought the aid of the Religious Freedom Restoration Act of 1993, 42 U.S.C. §§ 2000bb, *et seq.*, (hereinafter RFRA) which was the centerpiece of his cause in this federal action. With this Court having declared the foregoing statute unconstitutional, Dr. Ricchio is now relegated to seeking an alternative way to relitigate the constitutional issues that he last presented to this Court in 1994. In order to relitigate these issues, he seeks to avoid the bar created by the Rooker-Feldman doctrine.

A. The underlying religious dispute.

Dr. Ricchio's counsel conveniently misstates for this Court the findings of the numerous decisions of the Pennsylvania state courts in which it was consistently found as a matter of fact and law that your respondent Dr. Gerald E. Poesnecker had never been legally removed as the Supreme Grand Master of the Rosicrucians, and further that Dr. Ricchio had never been endowed in any legal way with the status of "Supreme Grand Master" or with any other position of authority after he and his co-defendants unlawfully seized the Rosicrucian's corporate offices.

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1. *Guarino v. Larsen*, 11 F.3d 1151, 1156 (3rd Cir. 1991); *see District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 103 S. Ct. 1303 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 44 S. Ct. 149 (1923).

B. The Pennsylvania courts decide who shall be petitioners religious leader.

The decisions of the Court of Common Pleas of Pennsylvania have been upheld by all of the state appellate courts. All have agreed that Dr. Ricchio and the persons previously aligned with him had no positions of authority within the Rosicrucians or its affiliated corporate entities that would have allowed them to take legal control of the Rosicrucian's fraternal and corporate entities. The state courts have also consistently confirmed the plebiscite process conducted by respondent Moyer. That process allowed any legally interested person to come forward and to vote for the persons who would thereafter be in control of those corporate entities. This Court denied Dr. Ricchio's Petition for a Writ of Certiorari on January 9, 1995.

C. The federal courts refuse to intervene.

Just prior to the ruling by the Pennsylvania Commonwealth Court on the matters raised with his second appeal, Dr. Ricchio filed the present federal action. On July 25, 1996, the Federal District Court dismissed Dr. Ricchio's complaint for lack of subject matter jurisdiction while applying the "Rooker-Feldman" doctrine. Judge Broderick held that all of the matters before him had been more than adequately considered at the state court level (*see* Appendix A of petitioner's petition). This decision was upheld by the Court of Appeals for the Third Circuit.

William Moyer was only named as party in order to invoke RFRA, a statute which is now legally defunct. As the appointed Custodian/Receiver of the Court of Common Pleas of Bucks County, (now a dismissed defendant), Moyer should have been likewise dismissed as a defendant on the basis of the Eleventh Amendment to the United States Constitution. The reasons for

his retention as a party were not made clear. Petitioner Ricchio can offer no cognizable theory as to why he should remain as a party.

REASONS FOR DENYING THE WRIT

I.

WAS PETITIONER A PARTY IN THE STATE COURT LITIGATION?

Petitioner, which is the unincorporated fraternal hierarchy was not, and could not under Pennsylvania or federal rules be, separately represented as a party in litigation without naming the individuals who properly represent it as trustees ad litem[2]. Your respondents have consistently pointed out in the lower federal courts that an unincorporated association may not maintain an action solely under its fictitious name. Such an action must be brought by identifiable natural persons who accept all of the legal responsibilities of litigants (*See* F.R.C.P. 23.2). No such persons have come forward in that capacity on behalf of your stated petitioner.

As stated above, the only natural person who is perpetrating this litigation is Dr. Paul Ricchio who by the lower courts ruling no longer has standing as a party in these proceedings. The "Grand Fraternity Rosae Crucis" (as it has been erroneously designated), may only be legally represented by its external operating corporations, or by its recognized and identifiable internal councils and Supreme Grand Master. The legitimate and

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2. Pa.R.C.P. 2152. Actions by Associations. An action prosecuted by an association shall be prosecuted in the name of a member or members thereof as trustees ad litem for such association. An action so prosecuted shall be entitled "X Association by A and B, Trustees ad Litem" against the party defendant.

recognized corporate directors, council members and Supreme Grand Master (Gerald Poesnecker) filed a petition to intervene in both the Federal District Court and the United States Court of Appeals in order to establish that they are in fact the only parties who can claim to represent the named petitioner "Grand Fraternity Rosae Crucis". Every natural person who claimed a position on those boards and councils openly provided the lower court with their full names and addresses. They accepted all of the responsibilities of litigants in this action.

In order to provide a facade of compliance with these legal requirements, petitioner Ricchio's counsel elicited, and filed with the Court of Appeals a dozen spurious affidavits of various persons to whom he casually attributed the status of membership in the Rosicrucians. These persons did not provide their addresses or in any way attempt to enter an appearance in this action. At best, they each lent their names to an extensive ad hominem diatribe contrived by Dr. Ricchio as a personal attack on respondent Poesnecker. None of the foregoing was submitted in accordance with the Federal Rules of Civil Procedure, and the same therefore have no evidentiary value.

Since the District Court denied subject matter jurisdiction and the United States Court of Appeals simply affirmed the District Court, counsel for Dr. Ricchio has been able to file this petition with no lower court determination of the issue of whether the interveners may legally represent the Rosicrucians to the exclusion of Dr. Ricchio and his legal counsel. Dr. Ricchio's counsel conveniently sidesteps this important matter and would have this Court accept him as the legitimate legal representative of the Rosicrucians when in fact the findings and record in the state and federal courts are quite to the contrary.

Petitioner's counsel has never entered an appearance for any natural person other than Dr. Ricchio. The "Rooker-

Feldman" doctrine cannot be circumvented by "pulling a rabbit out of the hat". The real parties in interest here have been involved since the state court action was initiated eight years ago. All members and interested persons of all the incorporated and unincorporated Rosicrucian entities were kept fully apprised of the status of the litigation at all times, or had full access to current information. No party in interest can in good faith suggest that he or she was excluded from that process. To suggest that the Grand Fraternity Rosae Crucis was not a party in the state court is illusory if not fraudulent.[3]

II.

DOES PETITIONER'S FILING OF A FEDERAL COMPLAINT PRIOR TO THE COMPLETION OF THE STATE LITIGATION AFFECT THE RESULT IN THE PRESENT ACTION?

Petitioner (Dr. Ricchio), would like to assert that by filing the present federal action before the completion of the parallel state litigation, he can effectively sidestep the long standing authority which is embodied in the "Rooker-Feldman" doctrine. He argues that there was no "final state court judgment" which would be reviewable and therefore that the federal courts were not divested of subject matter jurisdiction as found by Judge Broderick.

Without reviewing in detail the citations that apply under the "abstention" doctrine, it is clear that a litigant should not be entitled to avoid the effect of the "Rooker-Feldman" doctrine

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3. As Judge Broderick observed (Petition Appendix A11 to A12), even as a plaintiff Dr. Ricchio pled that the affiliated corporations are " 'interdependent with and inseparable from the Rosicrucians' " and that this may "obviously effect who may now lead the Rosicrucians and who may be entitled to bring an action in the name of the Rosicrucians".

by the expedited filing of a federal action when an adverse and final state adjudication is imminent. In this particular matter, Dr. Ricchio was fully aware when he filed the present action that the Pennsylvania Commonwealth Court had already denied his request for injunctive relief to enjoin the holding of the court ordered plebiscite. His obvious tactic was to race to the filing of the federal action in order to avoid the clear mandate of "Rooker-Feldman".

In an obvious attempt to force a reversal of the numerous state court decisions that excluded him from control of the Rosicrucians, Dr. Ricchio sought a basis for sabotaging or at a minimum at least a basis for invalidating after the fact the court ordered plebiscite. This would leave the Rosicrucian entities in chaos and in a quandry as to who was legally in charge. He further attempted to create confusion by his filing of the present federal action under the misstated name "Grand Fraternity Rosae Crucis" using as his authority for that filing the claim that he was the Supreme Grand Master.[4]

Having thus cloaked himself with apparent authority to represent a "new" litigant, Dr. Ricchio saw in RFRA a new legal basis for accomplishing his personal agenda. Had he been aware of RFRA during the pendency of the state court litigation, he would most certainly have raised it there in his initial challenge of the plebiscite. The demise of RFRA has in effect eliminated his entire federal claim. Judge Broderick clearly had authority to dismiss the complaint based on lack of subject matter jurisdiction.

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4. In the state court action, Dr. Ricchio and his co-defendants claimed that they had only appointed him as "Temporary Grand Master".

CONCLUSION

Dr. Ricchio has admitted (p. 8) that his "primary claim arises under the First and Fourteenth Amendments to the United States Constitution", both of which have been reviewed exhaustively by the state courts and by this Court. To disregard "Rooker-Feldman" and the "Abstention doctrine" would clearly result in a reconsideration of these issues by the federal courts. The same would be inappropriate as a basis for the granting of a Writ of Certiorari. For the foregoing reasons, the Writ of Certiorari should be denied.

Respectfully submitted,

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Supreme Court, U.S.
FILED
SEP 25 1997
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(3)

No. 97-211

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1997

THE GRAND FRATERNITY ROSAE CRUCIS,
Petitioner,

v.

WILLIAM B. MOYER, ESQUIRE and
GERALD POESNECKER,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

REPLY TO BRIEF IN OPPOSITION

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9 pp

Petitioner, the Grand Fraternity Rosae Crucis a/k/a the August Fraternity (the "Fraternity") hereby submits this Reply to Respondent's Brief in Opposition as follows:

A. Introduction

Respondents' Brief in Opposition succinctly - albeit unintentionally - sets forth the compelling need for the intervention of this Court to halt the wholesale hijacking of an entire religion *pursuant to court decree*. As set forth in their Brief in Opposition, Respondents purport to speak on behalf of Petitioner for no other reason than that the Pennsylvania courts have *anointed* Respondent Poesnecker as the Fraternity's *religious* leader and directed Respondent Moyer to assist Poesnecker in expropriating the Fraternity's worldly assets. This appalling and unprecedented abuse of governmental power led to the action below in the United States District Court for the Eastern District of Pennsylvania.

B. Background

The Fraternity is a hierarchial religious organization which has been in existence in the United States since 1774. Organizationally, it is an ecclesiastical hierarchy headed by a religious leader known as the Supreme Grand Master who has plenary control of all religious and temporal affairs. The Fraternity is not a congregational religious organization in which government of temporal affairs rests in its members as a self-governing independent democracy. Instead, in addition to the Supreme Grand Master, its religious authority is administered by the Council of Seven in a hierarchical religious government.

Dr. R. Swinburne Clymer was the Supreme Grand Master of the Fraternity from 1905 to his passing in 1966. His son, Emerson Clymer, served as Supreme Grand Master from 1966 to his passing in 1983. Respondent Gerald E. Poesnecker assumed leadership and became the presumptive Supreme Grand Master in 1983 and was removed in 1989 by the duly constituted Council of Seven for his many violations of and as required by the Organic Laws of the Fraternity.

In 1905 Dr. R. Swinburne Clymer, using his personal resources, created a physical headquarters for the Fraternity known as "Beverly Hall" in Quakertown, Pennsylvania. In 1921, he created the Beverly Hall Corporation (hereinafter "Corporation") as a non-profit religious corporation under Pennsylvania law to carry on the religious activities of the Fraternity. In 1941 he created the Beverly Hall Foundation (hereinafter "Foundation") as a non-profit corporation to hold title to the land and other property of the Fraternity as a "perpetual trust" for the religious use and benefit of the Fraternity. Both the Corporation and the Foundation were created as membership corporations with strictly proscribed voting rights in the by-laws limited to only those eligible members of the Fraternity and the Church of Illumination who met certain religious qualifications, and who apply for and are approved by the Board of Directors. Accordingly, qualification of voting members is an ecclesiastical decision. In 1980, Emerson Clymer changed the Foundation, but not the Corporation, to a non-membership corporation.

The ecclesiastical activities of the Fraternity are governed by its Canon Law which includes the following:

a) The Organic Laws which were promulgated by Dr. Clymer in 1964;

b) Its separate religious tenets;

c) Its ancient laws, usages and landmarks.

The Organic Laws govern not only matters dealing with internal religious affairs but also with secular religious matters conducted by the Corporation and Foundation. Examples of provisions dealing with purely internal religious affairs include but are not limited to the following:

a) The manner of succession to the office of Supreme Grand Master;

b) The creation of a Council of Three as a pool for the selection of a succeeding Supreme Grand Master;

c) Specific duties, obligations and limitations on the authority of a succeeding Supreme Grand Master;

d) Requirement of removal of a Supreme Grand Master for any violation of the Organic Laws;

e) The creation of a Council of Seven with mandatory authority to remove a miscreant Supreme Grand Master for any violation of the Organic Laws;

f) Requirement of removal of any Supreme Grand Master who is not in complete harmony with the religious teaching of the fraternity and deviates from the then existing religious texts and lessons of instructions.

Examples of provisions of the Organic Laws dealing with secular matters include but are not limited to the following:

a) That the Supreme Grand Master is also the President and Director General of the Corporation and the Foundation and the Director General of the Church of Illumination;

b) That the Supreme Grand Master selects and removes officers of the Corporation and Foundation;

c) The religious qualifications of the other directors and officers of the Corporation and Foundation;

d) Prohibiting the mortgaging of any real estate or other property of the Fraternity;

e) Protecting and restricting the use of the buildings and structures at Beverly Hall for the religious use only by Fraternity members.

Accordingly, the Fraternity, the Corporation and the Foundation are intertwined. And the supremacy of the Fraternity Canon Law over inconsistent provisions of the Pennsylvania Non-Profit Corporation Law is guaranteed by the subordination section thereof (15 Pa. C.S.A. Sec. 5107).

C. The underlying dispute

On September 12, 1989, the Council of Seven removed Respondent Poesnecker as Supreme Grand Master of the Fraternity for numerous violations of the Organic Laws relating to both purely internal religious matters and temporal corporal activities. Such removal was mandated by the Organic Laws which unequivocally provide as follows:

"I, R. Swinburne Clymer, do hereby make these Articles of Organic Law of the August Fraternity and declare that they shall be unequivocally binding upon the present Supreme

Grand Master and all succeeding Supreme Grand Masters and full and complete compliance therewith and obedience thereto is mandatory.

"Failure on the part of any Supreme Grand Master to comply with the letter or spirit of any of the provisions herein contained shall be just cause for the removal of such Supreme Grand Master from office."

At the same time, the Council of Seven installed Dr. Paul Ricchio as temporary Supreme Grand Master and appropriate action was taken in accordance with the by-laws to remove Poesnecker and others from their positions as directors and officers of the Corporation and the Foundation.

On September 13, 1989 the new corporate officers as trustees of all Fraternity property, lawfully took possession of the worldly assets of the August Fraternity.

Thus, prior to the state court litigation referenced in Respondents' Brief in Opposition, the genuine Fraternity was under the legitimate control of Dr. Ricchio as the newly appointed Supreme Grand Master and all of the Fraternity property was under the legitimate corporate control and possession of Dr. Ricchio and other duly installed directors and officers of the Corporation and the Foundation, all in compliance with the Organic Laws and the corporate by-laws. The genuine Fraternity was conducting its purely religious activities in full harmony with the Organic Laws as a hierarchical organization.

Subsequently, Respondent Poesnecker initiated legal action in the state courts to regain control of the Corporation and the Foundation. The proceedings in the state courts extended over five years of tedious, convoluted, confusing and expensive piecemeal litigation. Significantly, at the very beginning of the litigation, the state court trial judge opined that he was not sympathetic to a hierarchical religious organization in which one man had autocratic powers and its secret contributing membership had no vote or say in the organization. This opinion concerning the propriety of the Fraternity's ecclesiastical religious structure ultimately became the law as decreed by the Pennsylvania Courts. The litigation produced a congregational organization established by judicial decree led by

Respondent Poesnecker, a deposed, presumptive Supreme Grand Master who had egregiously violated the Organic Laws. The Pennsylvania Courts purported to convert the Fraternity from a hierarchical church to a congregational church because the Courts did not believe that a hierarchical religious structure was seemly and proper. As the chief beneficiary of this abuse of power, Respondent Poesnecker has subsequently tried to convert the Fraternity from a purely religious organization to a materialistic cult for his personal gain. Today, by operation of *court decree*, Respondent Poesnecker controls the Fraternity as the *elected* Supreme Grand Master and Director General of the Corporation and Foundation. This court ordered reign profanes the religious doctrine of the genuine Fraternity by making it serve Respondent Poesnecker's materialist, cultist and non-religious activities. He has undermined the Fraternity by advocating the abandonment of the Organic Laws and the hierarchical structure of the Fraternity.

The genuine Fraternity, together with its related corporations, has been illegally democratized and transformed from a hierarchical religious organization into a congregational church. Its Organic Laws have been nullified and its original by-laws emasculated by the action of the Pennsylvania courts. All of this was accomplished by judicial fiat under the guise of corporate oversight in which the state courts substantially burdened the free exercise of religion of the genuine Fraternity by refusing to accept as final the decision of the Council of Seven removing Respondent Poesnecker as Supreme Grand Master, returning the deposed miscreant Poesnecker as the Supreme Grand Master, sanctioning Poesnecker's spurious Council of Seven, changing the essential hierarchical elements of the Fraternity, authorizing a plebiscite of non-qualified voting members for the purpose of amending the original corporate by-laws and electing non-qualified directors and officers and ordering the return of control of the worldly assets of the Fraternity to Poesnecker and his followers.

The Petition to this Court is brought by the genuine Fraternity which remains faithful to the Organic Laws and is the beneficiary of the religious and corporate trust established by

Dr. R. Swinburne Clymer, the founder of Beverly Hall and promulgated by his Organic Laws. By its action in the United States District Court, Petitioner sought ultimately to extricate the state courts from its internal religious affairs and to reverse the state's abuse of power pursuant to which Respondent Poesnecker now masquerades as the legitimate Supreme Grand Master and, in profane violation of the Fraternity's Organic Laws, has converted to his own material ends the worldly assets of the Fraternity. Similarly, Petitioner also sought to prevent Respondent Moyer from serving up its worldly assets to the profane service of Respondent Poesnecker.

Respondent Poesnecker has, *inter alia,* converted certain of the Petitioner's sacred facilities into a chiropractic clinic with the profits going to Poesnecker. This is but one of many examples of the profane conversion by Respondent Poesnecker of the Fraternity's assets to his own venal purposes all of which has been sanctioned and caused by the Pennsylvania courts' unprecedented abuse of power.

As the creatures of this abuse of governmental power, Respondents argue that any challenge to the Pennsylvania courts' intervention in Petitioner's internal religious affairs is precluded by application of the *Rooker-Feldman* doctrine. In doing so, Respondents bid this Court to ignore the astounding degree to which the Pennsylvania courts have meddled in purely religious matters as well as compelling legal precedent which holds that *Rooker-Feldman* preclusion is peculiarly inappropriate where, as here, vital First Amendment issues are at stake. (See Petition and citations therein.)

Moreover, *Rooker-Feldman* preclusion should not apply given that the issues and parties in the federal court are different from the issues and parties in the state court proceedings. In the state courts, Petitioner, the faithful faction and true Rosicrucian Fraternity, was not sued and did not otherwise become a party or in any way request, support or participate in any of the court proceedings, including the failed Intervention Proceedings brought by the dissident faction supporting Poesnecker. Since participation in the plebiscite would require Rosicrucians to violate their membership oath of allegiance to

the Organic Laws and heirarchial structure of the Fraternity, they refused to participate in the plebiscite. They are the beneficiaries of the perpetual corporate trust created by Dr. R. S. Clymer for the benefit of the faithful members of the Fraternity. They constitute the faithful faction and true Rosicrucian Fraternity who have been deprived of and have the right to the identity and property of the Fraternity. They are the individuals whose religious interests and rights have been damaged by the personal, illegal actions of the Respondents Poesnecker and Moyer, individually and jointly, which impermissibly burdened Petitioner's free exercise of religion and for the impermissible establishment of religion in violation of the First and Fourteenth Amendments of the U. S. Constitution.

The Organic Laws, governing the religious and temporal activities of the Fraterntiy, are supreme, immutable, binding upon all members, and the sine qua non for the perpetuation, preservation and continuation of the purity and integrity of the genuine Fraternity, its religion, its temporal property and activities carried on by the Corporation and the Foundation. Poesnecker's violation of the Organic Laws was wholesale. He was removed by the Council of Seven on forty four (44) specifications covering violations of both internal religious matters (dealing with Religious Trust) and corporate matters (dealing with Corporate Trust). During the course of the state court proceedings, he continued his treasonous actions to undermine the Fraternity by advocating that the By-Laws and Organic Laws are "outdated, complex and ambiguous," and "cross reference each other in inexplicable ways." He further argued that "it is no longer appropriate for the religious fraternity to be linked inextricably with the corporate entities under the control of one person." Now that he is in control as the result of the plebiscite, he is no longer inhibited by the Organic Law.

The Bill of Particulars against Respondent Moyer is voluminous. His infractions include violations of Federal Postal Law; violations of the Organic Laws, Tenets and Ancient Landmarks, Customs and Practices of the Fraternity; improperly providing logistic support to Respondent Poesnecker as

Supreme Grand Master prior to such a determination by a final order of the trial court; aiding and facilitating Respondent Poesnecker to violate an Injunction Order prohibiting Poesnecker from selling Fraternity literary materials dealing with the Order of the Magi (a religious Order of the Fraternity); abuse and waste of corporate assets. All of the above were in violation of both the Subordination Section (15 Pa. C.S.A. Sec. 5107) of the Pennsylvania Nonprofit Corporation Law, which guarantees the supremacy of the Organic Laws, Tenets and Ancient Landmarks by subordinating and superseding any inconsistent provision of the said statutory law, and Moyer's limited court appointing authority which provided that he "shall not become involved in any of the religious activities of the Corporations protected by the First Amendment of the United States and Article I, Section 3 of the Pennsylvania Constitution."

D. Conclusion

There can be no doubt as to the extreme threat posed by the actions of the state courts in this case to religious freedom and independence. In terms of the free exercise of religion and establishment of religion, there has never been before this Court a more thoroughgoing transgression by civil authority into religious affairs. The instant Petition challenges nothing less than the complete and total governmental seizure of an entire religious body replete with a top-to-bottom restructuring to suit the egalitarian instincts of the state trial judge who expressed at the very beginning of the litigation his distaste for hierarchical organizations. That the seizure, restructuring, re-staffing and sacking of the Fraternity were the products of years of litigation in the state courts in no way lessens the stunningly egregious nature of the governmental abuse which Petitioner confronts. By its action, the Fraternity seeks to extricate the Pennsylvania courts and their creations (i.e., Respondents) from its internal religious councils and the return of its religious autonomy. Given these stakes, the Petition should be granted.